

1 Honorable John C. Coughenour  
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8 UNITED STATES DISTRICT COURT FOR THE  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT SEATTLE

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 DESMOND DAVID-PITTS,

15 Defendant.

16 NO. CR20-143JCC

17 UNITED STATES' SENTENCING  
18 MEMORANDUM

19 **I. Introduction.**

20 Throughout the summer of 2020, numerous protest gatherings were held in  
21 Seattle, particularly in downtown and the Capitol Hill neighborhood. These  
22 demonstrations were intended to be peaceful protests in support of important racial  
23 justice and equity issues. The vast majority of the people who participated in these  
24 protests acted responsibly and lawfully. Unfortunately, a small number of people –  
25 including defendant Desmond David-Pitts – took advantage of the cover provided by  
these protests to commit acts of violence, including arsons.

26 That is what happened on the night of August 24, 2020, when David-Pitts, as part  
27 of a larger group of people with whom he was associated, attacked the Seattle Police  
28 Department (“SPD”) East Precinct. Beginning just after 11:30 p.m., David-Pitts set a fire

1 | against the East Precinct's sallyport garage door. At the same time, others in the group  
2 | attempted to trap police officers inside the building by barricading shut the only exit  
3 | doorway in the sallyport, while still others set a second fire just around the corner from  
4 | the sallyport against an adjacent wall of the East Precinct. As noted by the Probation  
5 | Office: "This act of violence, carried out by a group of protestors, shows little respect for  
6 | the law and appears to have genuinely malicious intent. People could have been  
7 | seriously hurt if the plan had worked." *See* PSR Sentencing Recommendation at 4.

8 |       Fortunately, police officers ultimately were able to force their way out of the  
9 | precinct through the exit door and extinguish the fires. Remarkably, no one was injured  
10 | as a result of the defendant's dangerous conduct. Nonetheless, the actions of David-Pitts  
11 | and the others with whom he acted in concert undermined what was intended to be a  
12 | peaceful protest by converting it into a riot – creating a dangerous atmosphere of civil  
13 | disorder that resulted in property destruction and multiple arrests, and had great potential  
14 | to result in injuries to police officers and protestors.

15 | **II. Overview of David-Pitts' Offense Conduct.**

16 |       On August 24, 2020, at approximately 8:00 p.m., demonstrators began gathering at  
17 | Cal Anderson Park in Seattle as part of a protest concerning a recent police officer  
18 | involved shooting incident in Kenosha, Wisconsin. During the evening, the protestors  
19 | marched through Seattle to the SPD East Precinct and then to the West Precinct. By  
20 | approximately 11:30 p.m., a smaller group of approximately 200 protestors returned to  
21 | the SPD East Precinct. This number included David-Pitts and a group of individuals with  
22 | whom he was associating.

23 |       David-Pitts is from Anchorage, Alaska, and had only traveled to Seattle a couple  
24 | days earlier. Upon his arrival, David-Pitts began associating with a group of people who  
25 | were based in Cal Anderson Park. *See* PSR ¶ 51; Sentencing Recommendation at 3.  
26 | David-Pitts attended the August 24<sup>th</sup> protest with this group of people. *See* PSR ¶ 51;  
27 | Sentencing Recommendation at 4. During the protest, members of this group (although  
28 | not David-Pitts) were dressed in what is commonly referred to as "black bloc" attire,

1 including all black clothing, black protective head gear or hats, gas masks, and black  
2 umbrellas.<sup>1</sup>

3 Between 11:31 p.m. and 11:42 p.m., security surveillance cameras captured  
4 footage of David-Pitts starting the fire against the East Precinct sallyport garage door.  
5 The sallyport area is depicted in the images found in *Exhibit 1*, which were taken from  
6 the East Precinct's surveillance video camera. The first page of *Exhibit 1* shows the  
7 sallyport area immediately before David-Pitts set the fire. The sallyport consists of two  
8 portions – on the left is a bay area with a large garage door for SPD cars to enter and exit  
9 the East Precinct. On the right is a slightly elevated area with a standard-size door for  
10 officers to access the precinct. This door is only 30-40 feet away from the garage door.

11 The surveillance video captured David-Pitts engaging in the following actions  
12 with respect to setting the fire at the East Precinct:

- 13 • At 11:31 p.m., David-Pitts and another individual enter the camera view. David-  
14 Pitts approaches the garage door and appears to grab onto chains attached to the  
15 door, in an unsuccessful effort to pull it open. David-Pitts and the other person  
16 then walk out of the camera view. This unknown individual was wearing all black  
clothing, a black hat, ski goggles, and was carrying a black umbrella. *Exhibit 1*,  
page 2.
- 17 • At 11:35 p.m., David-Pitts reenters the camera view and again pulls on the chains  
18 of the garage door several times – using all his body weight by jumping up and  
19 down – in an apparent attempt to open the door. The door did not open. *Exhibit 1*,  
page 2.
- 20 • At 11:36 p.m., David-Pitts observes police officers attempting to exit the standard-  
size door in the sallyport area. David-Pitts reaches inside of a trash can and  
21 throws a glass wine bottle at the door as the SPD officers start to open it. The  
22 bottle shatters against the door, forcing the officers to retreat into the precinct and  
23 close the door. David-Pitts then runs out of the camera view. *Exhibit 1*, page 4.

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27 1 A review of video surveillance footage confirms that throughout the protest David-Pitts had multiple interactions  
with members of this group. David-Pitts can be seen walking alongside individuals in the group and speaking with  
28 them at various times during the footage. Others in the group also assisted him in setting the fire, as described  
below. See Plea Agreement ¶ 8, Page 7.

- At 11:37 p.m., David-Pitts reenters the camera view and throws a trash bag into the sallyport area towards the garage door. A few seconds later, he and another person enter the sallyport area. David-Pitts moves the trash bag against the garage door, on top of the tipped-over garbage can. He and the other person then depart the camera view. The other person was wearing all black clothing, a black hat or helmet, and a gas mask.
- At 11:40 p.m., two unknown individuals wearing all black clothing can be seen throwing additional garbage bags into the sallyport area in the vicinity of the garage door. A few seconds later, several small fireworks or similar explosive devices are thrown into the sally-port area by individuals who were off camera. The devices cause smoke but do not start a fire.
- While these fireworks devices are being thrown into the sally-port, David-Pitts reenters the area and approaches some of the garbage bags. David-Pitts uses a lighter in his hand to start a fire on one of the garbage bags. *Exhibit 1*, page 2.
- At 11:41 p.m., two other people enter the sallyport and assist David-Pitts in piling the garbage bags – including the one David-Pitts lit on fire – on top of the trash can against the garage door. These two individuals are wearing all black clothing, black hats or helmets, and gas masks. David-Pitts kneels next to the debris pile and can be seen moving his hands around, while flames emanate from the top of the pile. David-Pitts then walks over to another garbage bag and appears to try and ignite it with the lighter, although the bag does not seem to catch fire. One of the other individuals carries this garbage bag and places it near the debris pile against the garage door. *Exhibit 1*, page 2-3.
- At 11:42 p.m., David-Pitts re-approaches this garbage bag and successfully ignites it with a lighter in his hand. David-Pitts then leaves the flaming garbage bag next to the already burning debris pile against the garage door and departs the sallyport. The flames on the debris pile grow stronger, burning approximately 5-10 feet high. *Exhibit 1*, page 3.

At the same time David-Pitts was setting the fire in the sallyport, approximately ten members of the group he was with attempted to barricade the exit door in the sallyport, in an effort to prevent the officers who were inside the precinct from exiting through the door. These individuals were dressed in all black clothing, black protective head gear or hats, and some of them had gas masks on and/or were carrying black umbrellas. These individuals smashed the exterior card reader to the door, fixed a metal rod against the

1 door handle, and sprayed rapidly drying cement around the door. These activities were  
2 captured by the same SPD surveillance video camera.

3       Additional surveillance camera footage shows that between 11:37 p.m. and  
4 11:42 p.m., while all of the above described activities were ongoing, a few others in the  
5 group were setting a second fire just around the corner from the sallyport, against an  
6 adjacent wall of the East Precinct. These individuals broke through a chain link fence  
7 that was protecting the East Precinct. David-Pitts was captured on surveillance video  
8 assisting them in breaking through the fence. These individuals then used garbage bags  
9 and other debris to start a fire against the building. By approximately 11:43 p.m., the  
10 flames of this second fire reached up to 10-15 feet in height. These individuals were  
11 similarly dressed in full black clothing and had black protective head gear or hats, gas  
12 masks, and/or black umbrellas.

13       At approximately 11:43 p.m., SPD officers were able to force open the exit door in  
14 the sallyport, despite the efforts by the group to barricade it shut. Several officers exited  
15 the precinct and successfully extinguished the fire that David-Pitts set against the  
16 sallyport garage door. These officers also successfully mitigated the second fire around  
17 the corner, and the Seattle Fire Department ultimately responded to put out the fire.

18       The fire David-Pitts set caused damage to the East Precinct building. Specifically,  
19 the structure of the garage door had burn damage, including charring, smoke damage, and  
20 flame damage. There was also soot and hot vapor damage on and around the garage  
21 door. The SPD is seeking restitution for the damage caused by David-Pitts; SPD is in the  
22 process of gathering the requisite documentation of the restitution amount.

23       **III. The Sentencing Guidelines Calculations.**

24       The government concurs with the Sentencing Guidelines calculations set forth in  
25 the Presentence Report. The Probation Office correctly calculates the total offense level  
26 at 21, David-Pitts' Criminal History Category at I, and the advisory Sentencing  
27 Guidelines range to be 37-46 months.  
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1      **IV. Sentencing Recommendation.**

2      For the reasons set forth herein, the government recommends that the Court  
3 sentence the defendant to a term of imprisonment of **46 months** and a term of supervised  
4 release of three years, with all of the conditions of supervised release recommended by  
5 the Probation Office. The various statutory sentencing factors support a custodial  
6 sentence of 46 months in this case, including, most prominently, the nature and  
7 circumstances of the offense; the need for the sentence imposed to reflect the seriousness  
8 of the offense, to promote respect for the law, and to provide just punishment; the history  
9 and characteristics of the defendant; and the need for the sentence to afford adequate  
10 deterrence to criminal conduct.

11     **A. The Nature/Circumstances of the Offense and the Need for the Sentence to  
12 Reflect the Seriousness of the Offense and to Provide Just Punishment.**

13     David-Pitts' criminal activities were extremely dangerous and serious.  
14 Collectively, David-Pitts and the group with whom he was associating set two fires  
15 against the East Precinct – right around the corner from each other – and attempted to  
16 barricade shut the only nearby exit door. David-Pitts knew full well that there were  
17 police officers inside the precinct in the immediate area of the fires. As noted above, at  
18 11:36 p.m., while he was setting the fire, David-Pitts threw a bottle at officers as they  
19 tried to exit the precinct, forcing them back inside. Given the overall circumstances of  
20 the offense conduct, it is not difficult to understand why some of the police officers inside  
21 the East Precinct came to believe that David-Pitts and the rest of the group were trying to  
22 kill them. This wanton and dangerous conduct calls for a sentence at the high end of the  
23 Sentencing Guidelines range.

24     Fortunately – and somewhat incredibly – no one was injured as a result of David-  
25 Pitts' arson and the rest of the group's related conduct. Had David-Pitts caused injuries  
26 to others, a sentence much higher than the existing Guidelines range would certainly be  
27 appropriate (as would additional, more serious charges). But the converse is not the case.  
28 The fact that no one was injured is *not* a reason to vary *below* the Guidelines range,

1 which is not in any way based on whether a victim sustains an actual injury. In this case,  
2 David-Pitts knowingly created a risk of substantial injury to numerous other people; only  
3 by good fortune did he avoid causing a much more serious harm. *See* PSR Sentencing  
4 Recommendation at 4 (“This group of people attempted to barricade multiple people  
5 inside a building and then set that building on fire, hoping those individuals would not be  
6 able to escape. ... People could have been seriously hurt if the plan had worked.”). A  
7 sentence at the high end of the Guidelines range is the most appropriate sentence.

8       **B. David-Pitts’ History and Characteristics.**

9       The government agrees with the Probation Office that David-Pitts’ history and  
10 characteristics are, for the most part, mitigating. David-Pitts had a difficult upbringing  
11 with many obstacles, and he endured mistreatment that no child should encounter. In  
12 addition, he suffers from mental health and substance abuse issues. Lastly, he remains  
13 young at only 20 years old.

14       The government’s plea offer in this case was designed to acknowledge and  
15 account for the mitigating factors found in David-Pitts’ background. David-Pitts was  
16 originally charged by Indictment with the offense of Arson, in violation of Title 18,  
17 United States Code, Sections 844(f)(1) and (i), a charge that carries a five-year  
18 mandatory minimum sentence. But for the government’s exercise of prosecutorial  
19 discretion in this case, David-Pitts would be facing that mandatory sentence. Instead, the  
20 government allowed David-Pitts to enter a guilty plea to Conspiracy to Commit Arson,  
21 in violation of Title 18, United States Code, Section 371, enabling him to avoid the  
22 mandatory sentence, have the benefit of the lower Guidelines range, and to advocate for  
23 an even lesser sentence. The government extended this plea offer knowing that there  
24 were no proof issues with the case and that David-Pitts did not have any realistic defenses  
25 to present at trial.<sup>2</sup>

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28       <sup>2</sup> The government also consulted with the SPD, the victim agency, regarding the plea offer in this case. For its part,  
the SPD acknowledged the reasonableness of the plea offer given all the circumstances of the case and the  
defendant’s background and characteristics.

1       The government respectfully submits that the substantial benefits afforded to  
2 David-Pitts in plea agreement appropriately and fully account for the mitigation present  
3 in his background, and that a further variance below the applicable Guidelines range  
4 based on this sentencing factor would be unwarranted.

5       **C. The Need to Afford Adequate Deterrence to Criminal Conduct.**

6       This case presents the Court with an opportunity to send an important message of  
7 general deterrence. The defendant's offense did not occur in a vacuum. The protest on  
8 August 24, 2020, was not the first, or the last, legitimate protest event to be undermined  
9 by violent actors with other agendas. Regrettably, we have seen similar scenes play out  
10 in Seattle and throughout the United States during the spring and summer of 2020 and  
11 beyond. Indeed, the instant case is one of several charged by the United States  
12 Attorney's Office involving arsons and other dangerous criminal activities occurring in  
13 the context of initially peaceful protests turned into civil disorders as the result of violent  
14 acts undertaken by a few criminal actors.

15       The Court should take this valuable opportunity to send a powerful deterrent  
16 message to these sorts of offenders. The right to peacefully protest and gather in support  
17 of social and political causes is one of the dearest and most important rights that we enjoy  
18 in the United States. Protecting the ability of our citizens to express their views in this  
19 way is of paramount importance. One way to do that is to send a strong message to  
20 individuals who would seek to take advantage of, and abuse, the cover of lawful protests  
21 to carry out acts of violence, thereby risking the safety of the peaceful protestors and  
22 undercutting their important messages and causes. A term of 46 months in federal prison  
23 would send the most appropriate deterrent message in this case.

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## V. Conclusion.

For all of the reasons set forth above, the government recommends that the Court sentence the defendant to a term of imprisonment of 46 months and a term of supervised release of three years, with all of the conditions of supervised release recommended by the Probation Office.

DATED this 17<sup>th</sup> day of May, 2021.

Respectfully submitted,

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